

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VICKI L. BRIGGS,

Plaintiff,

v.

U.S. D.O.J., et al.,

Defendants.

No. 2:21-cv-1127-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a county jail inmate proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983. After a dismissal by the court, plaintiff has filed an amended complaint, which the court must screen.¹ ECF Nos. 11 & 13.

The court analyzed plaintiff's original complaint pursuant to § 1915A as follows:

The gist of plaintiff's complaint is that the Department of Justice, the California Department of Corrections and Rehabilitation, and the Sacramento Sheriff's Department unlawfully deprived her of \$245 by falsely charging her with larceny. ECF No. 1 at 1, 5. She stresses that she is "NOT INCOMPETENT," and states that her "18 yr old son[]"s cells ++ have been cloned for ungodly reasons – we are in danger and all my family has just been killed." *Id.* at 5. As discussed below, there are a lot of problems with the complaint.

¹ Congress mandates that district courts engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b).

1 Plaintiff invokes the False Claims Act, which creates a cause of action for
2 the United States to recover economic losses incurred from fraudulent claims for
3 payment. 31 U.S.C § 3729. Under the statute's "qui tam" provision, private
4 whistleblowers who have evidence of fraud, may assert the government's claim on
5 its behalf. *Id.* § 3730(b). It is not clear from plaintiff's complaint who allegedly
6 made a fraudulent claim for payment. Nor do plaintiff's allegations appear to have
7 any relevance to the False Claims Act. It seems instead that plaintiff wants to
8 challenge her arrest and/or conviction for larceny.

9 If plaintiff is currently confined to county jail because of her arrest, her
10 claim is likely barred by *Heck v. Humphrey*, 512 U.S. 477, (1994). *Heck* holds
11 that if success in a section 1983 action would implicitly question the validity of
12 confinement or its duration, the plaintiff must first show that the underlying
13 conviction was reversed on direct appeal, expunged by executive order, declared
14 invalid by a state tribunal, or questioned by the grant of a writ of habeas corpus.
15 *Muhammad v. Close*, 540 U.S. 749, 751 (2004).

16 Moreover, a pro se plaintiff, like other litigants, must satisfy the pleading
17 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)
18 "requires a complaint to include a short and plain statement of the claim showing
19 that the pleader is entitled to relief, in order to give the defendant fair notice of
20 what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*,
21 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
22 Rule 8(a)(3) requires a complaint to contain a demand for judgment for the relief
23 sought. Plaintiff's complaint does not include a request for relief, such as
24 monetary damages or specific injunctive relief.

25 Finally, many of plaintiff's allegations are irrational and her claims are
26 quite possibly frivolous. A claim is frivolous "when the facts alleged arise to the
27 level of the irrational or the wholly incredible, whether or not there are judicially
28 noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25,
33 (1992); *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (holding that "§
1915(d)'s term 'frivolous,' when applied to a complaint, embraces not only the
inarguable legal conclusion, but also the fanciful factual allegation."). Whatever
the nature of the claim plaintiff is attempting to assert it appears to be predicated
on factual allegations that are fanciful and irrational. However, in an abundance of
caution, plaintiff will be given the opportunity to amend her complaint to cure the
deficiencies identified herein.

ECF No. 11 at 2-6.

Although the amended complaint now includes a request for relief (\$500,000, *see* ECF
No. 13 at 3) and omits some of the more frivolous allegations, it does not materially differ from
the original (and deficient) claims. The amended complaint repeats vague allegations regarding
the loss of \$245 and again invokes the False Claims Act improperly. Plaintiff adds an allegation

1 that she was “beaten” by a boxer named Frajman, but she does not identify Frajman as a
2 defendant or otherwise satisfy the pleading requirements of Rule 8(a) with respect to this
3 potential but seemingly unrelated claim.² *See id.* at 3. For these reasons, the amended complaint
4 must be dismissed for failure to state a claim upon which relief could be granted.

5 The court has afforded plaintiff a chance to amend her complaint, yet she is unable to state
6 a claim upon which relief could be granted. Consequently, it declines to offer her further
7 opportunity to amend. *See Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)
8 (futility of amendment and previous opportunities to amend are factors to assess in weighing the
9 propriety of granting leave to amend).

10 Accordingly, it is ORDERED that the Clerk of Court shall randomly assign a United
11 States District Judge to this case.

12 Further, it is RECOMMENDED that plaintiff’s amended complaint (ECF No. 13) be
13 DISMISSED without leave to amend for failure to state a cognizable claim.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
19 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: November 9, 2021.

22 
23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
25
26

27 ² The court’s original screening order warned against changing “the nature of this suit by
28 alleging new, unrelated claims” in an amended complaint. *See* ECF No. 11 at 4 (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)).